

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Girsih K. Muralidharan § Group Art Unit: 2143
§
Serial No.: 10/723,864 § Examiner: Fearer, Mark D.
§
Filed: November 26, 2003 § Confirmation No.: 9698
§
For: METHOD AND APPARATUS § Atty. Docket: 138256-1 SV/YOD/DOO
FOR DYNAMICALLY § GEMS:0249
ADAPTING IMAGE UPDATES §
BASED ON NETWORK §
PERFORMANCE §

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF TRANSMISSION OR MAILING
37 C.F.R. 1.8

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In light of the following remarks, Appellant respectfully requests review of the final rejection in the above-referenced application. No amendments are being filed with this Request. This Request is being filed with a Notice of Appeal. In the Final Office Action mailed March 30, 2009, the Examiner rejected claims 1-18, 20-23, 31-35, and 40-49. Claims 1-23, 31-35, and 40-49 remain pending in the present application. Appellant respectfully requests reconsideration of the pending claims in view of the following remarks.

Rejections of Independent Claims 1, 15, 31, and 40-42

In the Final Office Action, the Examiner rejected independent claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Huffman, U.S. Publication No. 2004/0005094 (hereinafter “Huffman”) in view of Machida, U.S. Patent No. 6,642,943, (hereinafter “Machida”) in further view of Wood et al., U.S. Patent No. 5,851,186 (hereinafter “Wood”) and in further view of Wiklof et al., U.S. Publication No. 2005/0023356 (hereinafter “Wiklof”); independent claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Tokunaga et al., U.S. Patent No. 5,968,132 (hereinafter “Tokunaga”) in view of Wood, in further view of Benejam et al., U.S. Patent No. 7,133,915 (hereinafter “Benejam”), and in further view of Mustafa, U.S. Publication No. 2002/0087716 (hereinafter “Mustafa”); independent claims 31 and 40 under 35 U.S.C. § 103(a) as being unpatentable over Tokunaga in view of Wood and in further view of Aweya et al., U.S. Patent No. 7,047,312 (hereinafter “Aweya”) and in further view of Mustafa; independent claim 41 under 35 U.S.C. § 103(a) as being unpatentable over Tokunaga in view of Wood and in further view of Mustafa; and independent claim 42 under 35 U.S.C. § 103(a) as being unpatentable over Huffman in view of Wiklof, in further view of Machida and in further view of Wood. Appellant respectfully traverses these rejections.

Omitted Features of Independent Claims 1 and 42

Independent claims 1 and 42 recite, *inter alia*, “a scanner module configured to modify a scanning rate of the image data...a plurality of network sensors...configured to provide network performance data to the serving station, wherein the serving station dynamically modifies at least one of the scanning rate and the encoding format based on the network performance data.” (Emphasis added.) The Examiner appears to have relied on Wiklof to teach a scanner module configured to *modify a scanning rate* of the image data. See Final Office Action, pages 6 and 33-34. Specifically, the Examiner relied on a teaching in Wiklof of a 2D scanner that scans along one axis horizontally at about 19 KHz while scanning along the other axis vertically at 60 Hz. See Wiklof, paragraph 73. Thus, while Wiklof does disclose two scanning rates, the scanning rates are part of the same 2D scan. That is, the individual scanning rates are consistent for both the horizontal axis (about 19 KHz) and the vertical axis (60 Hz) for each scan. These rates do not change, in contrast to independent claims 1 and 42 which recite a scanner module configured to *modify a scanning*

rate of the image data. Thus, utilization of *constant* scanning rates in Wiklof simply cannot teach *modifying* a scanning rate of the image data, as recited in independent claims 1 and 42. Accordingly, Wiklof fails to teach the elements of independent claims 1 and 42 as suggested by the Examiner.

Additionally, the Examiner appears to have relied on Machida to teach a plurality of network sensors configured to provide *network performance data* to the serving station, wherein the serving station dynamically modifies at least one of *the scanning rate and the encoding format* based on the *network performance data*. See Final Office Action, pages 3-4 and 35. Specifically, the Examiner relied on a teaching in Machida describing adjusting the resolution of a copier from 600 dots per inch (dpi) to 300 dpi when there is traffic on the network. See Machida, col. 15, lines 36-54. That is, to speed printing/scanning functions of a digital copier, the resolution may be automatically set to a predetermined level (in this case, $\frac{1}{2}$ the normal level).

However, while Machida does teach of adjusting the *resolution* of a copier from 600 dpi to 300 dpi, there is no suggestion that adjusting *resolution* of a copier affects the *scanning rate* of the scanner module. Moreover, contrary to the position of the Examiner (see Final Office Action, page 64), Wiklof fails to cure this deficiency (see discussion above). Accordingly, Machida fails to teach the elements of independent claims 1 and 42 as suggested by the Examiner. Moreover, Wood and Huffman fail to overcome the deficiencies of Wiklof and Machida as set forth above. Thus, the Huffman, Machida, Wood, and Wiklof references, even in hypothetical combination, fail to disclose all elements of independent claims 1 and 42. As such, Appellant respectfully requests withdrawal of the Section 103 rejection of independent claims 1 and 42, and further requests allowance of independent claims 1 and 42, as well as all claims depending therefrom.

Omitted Features of Independent Claim 15

Independent claim 15 recites, *inter alia*, “adjusting the screen data comprises *modifying* a frame buffer scanning algorithm based on the network performance.” (Emphasis added). The Examiner conceded that Tokunaga, Wood, and Benejam fail to teach modifying a *frame buffer scanning algorithm* based on the network performance. See Final Office Action, page 14. To cure this deficiency, the Examiner relied on Mustafa. See *id.* Specifically, the Examiner

relied on a teaching in Mustafa of an algorithm that describes receiving a sub-frame, checking if a buffered sub-frame is in a correct sequence with the received sub-frame, storing the buffered sub-frame if it is sequentially correct, and disregarding the buffered sub-frame if it is sequentially incorrect and beginning a new frame with the received sub-frame. *See* Mustafa, paragraphs 121 and 124. Thus, Mustafa appears to teach the implementation of a packet reception algorithm that includes a buffering element. However, this algorithm appears to be *constant*; that is, the same algorithm is applied again and again for each received sub-frame. In contrast, independent claim 15 recites *modifying* a frame buffer scanning algorithm based on the network performance. The algorithm of Mustafa simply is not *modified* based on network performance. Instead, the algorithm appears to be consistently applied to *all* received sub-frames, *regardless of the network performance*. Utilization of a *constant* sub-frame receiving algorithm in Mustafa simply cannot teach *modifying* a frame buffer scanning algorithm based on the network performance, as recited in independent claim 15. Accordingly, Mustafa fails to teach the elements of independent claim 15 as suggested by the Examiner. Thus, the Tokunaga, Wood, Benejam, and Mustafa references, even in hypothetical combination, fail to disclose all elements of independent claim 15. As such, Appellant respectfully requests withdrawal of the Section 103 rejection of independent claim 15 and its allowance, as well as that of all claims depending therefrom.

Omitted Features of Independent Claims 31 and 40

Independent claims 31 and 40 recite, *inter alia*, “comparing the *network performance* to a *specified range*.” (Emphasis added). The Examiner conceded that Tokunaga, Wood, and Aweya fail to teach comparing the network performance *to a specified range*. *See* Final Office Action, page 22. To cure this deficiency, the Examiner relied on Mustafa. *See* Final Office Action, pages 22-23. Specifically, the Examiner relied on a teaching in Mustafa of creating multiple service classes and assigning each service class a specified range of sequence numbers. *See* Mustafa, paragraph 26. Thus, Mustafa appears to teach assigning sequence numbers (i.e., identifiers) to service frames carried over a data link layer, where the sequence numbers identify services of the frames such as voice, SNA, and LAN services. *See* Mustafa, paragraphs 26-27. In contrast, independent claims 31 and 40 recite comparing the *network performance* to a *specified range*. The teachings of Mustafa directed to identification bits appended to transmittable frames appear to be wholly different from comparing the *network performance* to a *specified range*. Accordingly, Mustafa fails to teach

the elements of independent claim 15 as suggested by the Examiner. Thus, the Tokunaga, Wood, Aweya, and Mustafa references, even in hypothetical combination, fail to disclose all elements of independent claims 31 and 40. Accordingly, Appellant respectfully requests withdrawal of the Section 103 rejection of independent claim 15 and its allowance, as well as that of all claims depending therefrom.

Omitted Features of Independent Claim 41

Independent claim 41 includes recitations similar to independent claim 15, specifically “adjusting the screen data comprises *modifying* a frame buffer scanning algorithm based on the network performance.” (Emphasis added.) Appellant respectfully requests that independent claim 41 be allowed for the same reasons set forth above with respect to independent claim 15.

Conclusion

In view of the above remarks, Appellant respectfully requests that the Panel instruct the Examiner to withdraw the outstanding rejections under 35 U.S.C. §§ 103 and allow the pending claims.

Respectfully submitted,

Date: June 30, 2009

/Patrick S. Yoder/

Patrick S. Yoder
Reg. No. 37,479
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545